

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

	X	
	:	
UNITED STATES OF AMERICA,	:	Criminal Action
	:	
Plaintiff,	:	No. 2:12-cr-00207-3
	:	
v.	:	
	:	Date: February 7, 2018
PATRICK WARREN NAPIER,	:	
	:	
Defendant.	:	
	X	

TRANSCRIPT OF SUPERVISED RELEASE REVOCATION HEARING HELD  
BEFORE THE HONORABLE DAVID A. FABER, SENIOR STATUS JUDGE  
UNITED STATES DISTRICT COURT  
IN CHARLESTON, WEST VIRGINIA

APPEARANCES:

For the Government:           AUSA JOSHUA C. HANKS  
                                      U.S. Attorney's Office  
                                      P.O. Box 1713  
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For the Defendant:           GREGORY J. CAMPBELL, ESQ.  
                                      Campbell Law Offices  
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Probation Officer:           Jeff Bella

Court Reporter:              Ayme Cochran, RMR, CRR

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

1 PROCEEDINGS had before The Honorable David A. Faber,  
2 Senior Status Judge, United States District Court, Southern  
3 District of West Virginia, in Charleston, West Virginia, on  
4 February 7, 2018, at 1:36 p.m., as follows:

5 THE COURT: The case before the Court this  
6 afternoon is the United States against Patrick Warren  
7 Napier. This is docket number 2:207-3.

8 Will the attorneys note their appearances, please?

9 MR. HANKS: Josh Hanks on behalf of the United  
10 States, Your Honor.

11 MR. CAMPBELL: Gregory Campbell on behalf of the  
12 the defendant, Patrick Napier, who is present here in the  
13 courtroom, Judge.

14 THE COURT: Thank you, Mr. Campbell.

15 The matter is pending upon a petition filed seeking  
16 revocation of the defendant's supervised release and a  
17 number of amendments.

18 Mr. Campbell, have you had an opportunity to review all  
19 of these papers and go over them with your client?

20 MR. CAMPBELL: I have, Your Honor.

21 THE COURT: Are you ready to proceed today?

22 MR. CAMPBELL: Yes, sir.

23 THE COURT: All right. Mr. Napier, you're -- you  
24 can be seated.

25 Mr. Napier, you're charged with numerous violations of

1 your supervised release as more particularly set forth in  
2 the petition and its amendments. I won't go through them  
3 one by one, but I do want to advise you that, as a general  
4 matter, the possession of a firearm, destructive device --  
5 excuse me. Commission of another crime, unlawful possession  
6 of a controlled substance, possessing of a firearm while on  
7 supervised release, leaving the judicial district, failure  
8 to answer truthful inquiries by your probation officer,  
9 failure to notify your probation officer at least ten days  
10 prior to change in employment, failure to notify the  
11 probation officer within 72 hours of being arrested and  
12 failure to complete participation in a program of counseling  
13 and treatment for drug and alcohol abuse.

14 You have the right to written notice of the alleged  
15 violations and disclosure of the evidence against you, the  
16 right to deny the truth of the charges and put the burden on  
17 the United States to prove them by preponderance of the  
18 evidence, the right to counsel at all stages of the  
19 proceedings, the right to remain silent, the right to  
20 confront and cross examine any government witnesses against  
21 you and the right to present witnesses and other evidence on  
22 your own behalf, if you so desire.

23 Mr. Campbell, let me ask you what your client's  
24 position is with regard to the charges here?

25 MR. CAMPBELL: Your Honor, the last hearing we had

1 before Judge Johnston, the petition was held in abeyance and  
2 Mr. Napier went to Recovery Point. Prior, prior to the  
3 court holding everything in abeyance, we did not contest any  
4 of the charges that -- I guess through the second -- we're  
5 on the third amendment. We didn't charge [sic] anything  
6 from the Second Amendment back to the origin. I do believe  
7 there might have been some discussion on this one about the  
8 firearm, but it didn't -- I believe it was inoperable. So,  
9 I think our B violation got more or less from the controlled  
10 substances.

11 So, like I say, as to -- as to -- we didn't contest  
12 from the second petition back and we do not contest the  
13 charges here in the third petition, Judge, third amended --  
14 the last petition.

15 THE COURT: All right. Mr. Hanks, are you  
16 satisfied with that or do you want to present anything else  
17 today?

18 MR. HANKS: No. I'm satisfied, Your Honor. We  
19 covered a great deal of that in the previous hearing and I'm  
20 satisfied with the defendant's admissions through counsel.

21 THE COURT: All right. I find that the matters of  
22 record, including the original Presentence Report, contains  
23 sufficient information for me to proceed to a resolution of  
24 this matter today.

25 I further find that the guideline calculations are as

1 follows: The most serious grade of violation is a B. The  
2 Criminal History Category is I. This yields a statutory  
3 custody range of 24 months and supervised release under the  
4 statute of at least 36 months less any term of imprisonment  
5 imposed.

6 The guideline provisions are 4 to 10 months of  
7 incarceration and a supervised release term of 36 months  
8 less any imprisonment imposed.

9 The court notes that under the *Davis* case of the Fourth  
10 Circuit decided in 1995, the guideline range and revocation  
11 matter is advisory and the maximum statutory range of  
12 imprisonment here would be 24 months.

13 Mr. Campbell, I'll hear any argument you care to make  
14 on what you believe the appropriate resolution of this  
15 matter might be.

16 MR. CAMPBELL: Your Honor, I would ask the court  
17 to strongly consider sentencing Mr. Napier within the  
18 guideline range and -- which could be, in this case, up to  
19 10 months, 4 to 10 months. And then, Judge, after that, I  
20 would ask the court not to impose any more supervised  
21 release and to let him -- let this case expire after this  
22 term of supervised release is over. I ask that, Judge --  
23 the last time, it appears that -- Judge, I've been with Mr.  
24 Napier. I mean, you know, he can be a good person, but he  
25 has a serious, tremendous drug problem, but he couldn't even

1 stay in Recovery Point long enough. He's got, though,  
2 Judge, the one thing he does have that most of the people  
3 that stand before you don't have, or at least most of my  
4 clients don't have, is he has tremendous family support.  
5 His mother and her husband have just gone above and beyond  
6 board to help Patrick.

7 When he gets through with incarceration, I've talked to  
8 her. She is still there for him, but it would seem to me,  
9 Judge, that after going through the petitions and seeing the  
10 violations and everything else, that perhaps the best thing  
11 to do is let him pay for this violation through the federal  
12 court system, release him from the federal system and, to  
13 the extent that he commits crimes, most of these charges  
14 seem to be small crimes or drug-related, let those be  
15 handled -- if, in fact, he's charged, let those be handled  
16 at the state level.

17 But Mr. Napier has been in federal prison. He has --  
18 he's pulled time in county jails. He has -- he's been under  
19 supervision for sometime, whether -- whether he wasn't  
20 always the best supervisee but, I mean, he's been under  
21 supervision and I would just ask the court to consider that  
22 after a guideline sentence here, which would serve at least  
23 -- I don't know how much of a deterrent prison is to Mr.  
24 Napier. It seems to be drug-fueled when he gets out. It  
25 would certainly be a deterrent to others, a guideline

1 sentence. I mean, anywhere from 4 to 10 months is plenty of  
2 time for him to serve, get this over with, and get back out  
3 and see if he can get straightened up and that's what I  
4 would ask the court to consider. Thank you.

5 THE COURT: Thank you, Mr. Campbell.

6 Mr. Napier, anything you want to say to me before I  
7 sentence you here?

8 THE DEFENDANT: Yes, sir. I do appreciate you  
9 letting me speak today and, like he said, I do prison  
10 alright. You know what I mean? I do my time. I don't  
11 bother anybody.

12 Out on the street, as you can see, these charges here,  
13 I was -- I wasn't selling drugs. I wasn't out selling  
14 drugs. I mean, yeah, was I doing not exactly what I was  
15 supposed to do? Yeah. I wasn't -- wasn't doing -- you know  
16 what I mean? I got -- I had some things that I had some  
17 problems with, as far as, you know, doing drugs and whatnot.

18 A lot of those base from, you know, I've lost custody  
19 of my children along the way. I had a trucking company  
20 where I was owner and operator. I hauled coal. I had a  
21 small construction company here in West Virginia. That all  
22 went kaput. I turned in the manner that I shouldn't turn,  
23 which would be using drugs. That's no excuse for doing what  
24 I did or selling drugs when I got this charge originally  
25 before I went to prison.

1 I stand here before you going to -- through more and  
2 more rehab, or going to the rehab in the manner that I did,  
3 I got thrown out of it. I was with a guy that stole a can  
4 of pop and they said I grabbed a candy bar. I didn't grab  
5 no candy bar, but the boy I was with did steal a pop.

6 You know, I hope you can show some leniency. Then, I  
7 want to get back out there and go to work. If you'll read  
8 my PSI report, sir, since I've been a young man, I've  
9 worked.

10 I'm from a coal mining family. We've been coal truck  
11 drivers or truck drivers or coal miners. And, like I say, I  
12 want to work. The coal fields are starting to pick back up  
13 a little bit now that we've got Mr. Trump in there. So, I  
14 would love to get out there and get to work.

15 Where I was at, where I was on paper, was down in that  
16 area. There wasn't much going on. Through some depression  
17 of getting back there out on the street and getting  
18 incarcerated and whatnot, I turned to the wrong manner.  
19 Like I said, not having my children around, I turned in a  
20 bad way. I was doing drugs and stuff like that that I  
21 shouldn't have been doing.

22 The coal fields are picking back up. I want to get out  
23 there and get to work. So, if I can get this sentence out  
24 of the way and get back to work as soon as I can and be done  
25 with all this, I sure would appreciate it. And God bless

1       you.

2               THE COURT:   Okay.   Mr. Hanks?

3               MR. HANKS:   Your Honor, the thing that's, I think,  
4       apparent from the record here is that Mr. Napier cannot, or  
5       will not, at least, abide by the conditions imposed by the  
6       court and his probation officer.   He's been afforded many,  
7       many opportunities, treatment, reintegration, all the  
8       services that Probation can provide.

9               It's also clear to me that despite having been provided  
10       those opportunities, he's expressed no interest in  
11       completing anything that he started with them.   The threat  
12       of additional jail time hanging over his head apparently  
13       makes no difference whatsoever.

14              So, you know, the court -- the United States' position  
15       here, and I've consulted with the probation officer, as  
16       well, is whatever sentence the court imposes, simply do not  
17       -- and we would just ask that you not re-impose any term of  
18       supervised release and we could -- we wish Mr. Napier the  
19       best of luck.   Hopefully, he can get employed and go about  
20       his business, but I think that we've done everything that  
21       the courts can do for him and then we just need to move on.

22              THE COURT:   Well, it's clear to me from the long  
23       record of violations here that Mr. Napier is not amenable to  
24       supervision at all.   Do you agree with that?

25              MR. HANKS:   I do.   There's really no indication

1       that he's responsive at all.

2               THE COURT: Okay. Having said that, in light of  
3       that, do you think that a sentence at the top of the  
4       guidelines here is adequate in this case to satisfy the  
5       statutory objectives of sentencing here?

6               MR. HANKS: Well, I thought about that, Your  
7       Honor. You know, most of these violations are completely  
8       self-destructive. You know, the firearm is troubling, but  
9       the facts of that are vague enough as to who possessed it,  
10      whether it was functional, that I hesitate to make the  
11      strong argument based on the presence of that firearm. It's  
12      uncomfortable as -- from a public safety point of view that  
13      on at least one occasion, he was caught inhaling, you know,  
14      whatever he was inhaling while in a car in a public place.  
15      He also apparently resisted arrest with an officer.

16              You know, I could certainly make the case that he needs  
17      to be, you know, given the maximum sentence. I think the  
18      top of the guidelines on balance would be sufficient, but I  
19      think very few people would really be able to make an  
20      argument to -- you know, contrary to the court's decision to  
21      impose the maximum, as well. So, just -- we would ask that,  
22      you know, at least to the top of the guidelines and then no  
23      more supervised release.

24              THE COURT: All right. That's what I'm going to  
25      do, Mr. Napier. I find that your -- based on your record,

1 that any further term of supervised release would be not  
2 only a waste of time, but it would place an undue burden  
3 upon the Probation Department since you've just proven  
4 yourself to be totally unable to cooperate with the terms of  
5 your supervision.

6 So, I'm going to sentence you at the top of the  
7 guidelines with no re-imposition of supervised release and  
8 just hope the best for you. I hope that you get dried out  
9 while you're spending the ten months and then that you --  
10 you'll do what you tell me you're going to and you'll go to  
11 work and hopefully stay clean and reconnect with your  
12 family.

13 And I think this is the best I can do for you. I don't  
14 think putting you in a rehab program or anything like that  
15 is appropriate under the -- with a view toward your history.

16 So, having said all that, pursuant to the Sentencing  
17 Reform Act of 1984, it is the judgment of the court that the  
18 defendant, Patrick Warren Napier, is hereby committed to the  
19 custody of the Bureau of Prisons to be imprisoned for a term  
20 of 10 months.

21 The court finds that the violations are established by  
22 a preponderance of the evidence and revocation is  
23 appropriate in this case.

24 Is there any objection to the form of the sentence, Mr.  
25 Campbell?

1 MR. CAMPBELL: No, Your Honor.

2 THE COURT: Mr. Hanks?

3 MR. HANKS: No, Your Honor. Thank you.

4 THE COURT: Okay. I've given you 10 months and  
5 you will be off paper. There will be no re-imposition of  
6 terms of supervised release, Mr. Napier.

7 In view of the long list of violations here, I feel  
8 like I'm giving you a real generous break here, and I hope  
9 you make the best of it.

10 THE DEFENDANT: Sir, I certainly appreciate you.  
11 God bless you.

12 THE COURT: Okay. Court will be closed.

13 (Recess taken)

14 THE COURT: I forgot to give you your appellate  
15 rights, Mr. Napier.

16 You have the right to appeal the court's action here.  
17 If you wish to appeal, you must file within ten days a  
18 Notice of Appeal with the Clerk of this Court. If you wish  
19 to appeal and can't afford to hire counsel on appeal,  
20 counsel will be appointed for you and, if you so request,  
21 the clerk will file -- prepare and file forthwith a Notice  
22 of Appeal on your behalf.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, is there anything else we need to  
25 take care of?

1 MR. HANKS: I think that covers it. Thank you.

2 MR. CAMPBELL: No, Your Honor.

3 THE COURT: I usually ask counsel that question  
4 and I didn't this time.

5 MR. CAMPBELL: Thank you, sir.

6 THE COURT: All right. Thank you all.

7 (Proceedings concluded at 1:52 p.m., February 7, 2018.)

8

9 CERTIFICATION:

10 I, Ayme A. Cochran, Official Court Reporter, certify  
11 that the foregoing is a correct transcript from the record  
12 of proceedings in the matter of United States of America,  
13 Plaintiff v. Patrick Warren Napier, Defendant, Criminal  
14 Action No. 2:12-cr-00207-3, as reported on February 7, 2018.

15

16 s/Ayme A. Cochran, RMR, CRR

June 11, 2020

17 Ayme A. Cochran, RMR, CRR

DATE

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